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U.S. DEPT. OF JUSTICE
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Supreme Court of the United States.

IN THE MATTER

OF

THE PETITION OF GEORGE F. UNDERHILL FOR A WRIT
OF HABEAS CORPUS TO THE CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT.

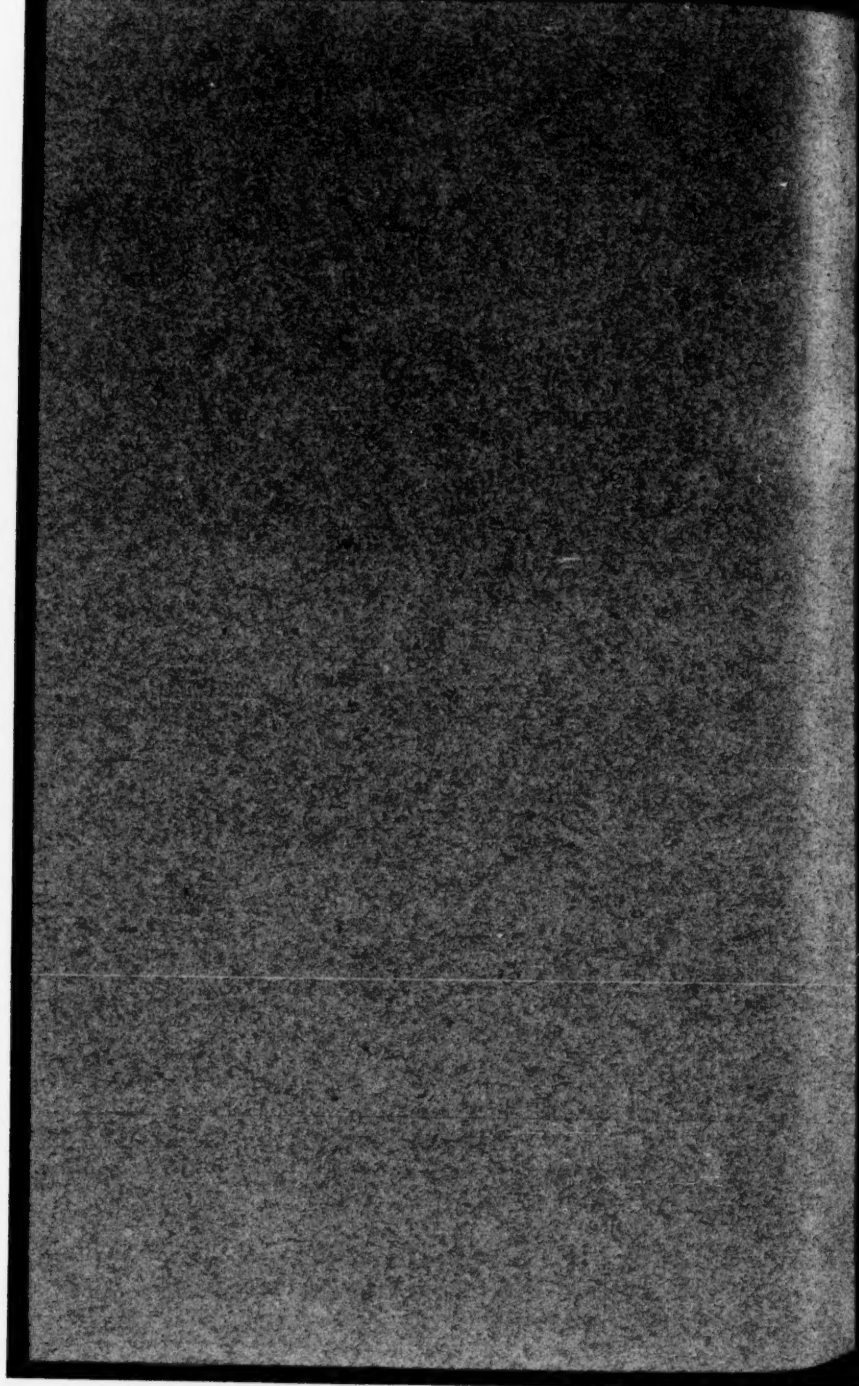
PETITION.

SALTER S. CLARK,

Of Counsel for Petitioner,

58 William Street,

N. Y. City.



To the Supreme Court

OF THE UNITED STATES OF AMERICA.

The petition of GEORGE F. UNDERHILL for a writ of certiorari, directed to the Circuit Court of Appeals for the Second Circuit, to bring before the Supreme Court the case of

GEORGE F. UNDERHILL, <i>Plaintiff and Plaintiff in Error,</i> <i>against</i> JOSE MANUEL HERNANDEZ, <i>Defendant and Defendant</i> <i>in Error.</i>	}
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The said petitioner respectfully shows to this Court as follows:

I.—That your petitioner was, at the time of the commencement of this action, a citizen and resident of the State of New York, and that the defendant was, at that time, a citizen of the Republic of Venezuela, in South America.

II.—That on the 2d day of November, 1893, your petitioner commenced an action against the above-named defendant, Jose Manuel Hernandez (here-

after to be called, respectively, plaintiff and defendant), in the Supreme Court of the State of New York, to recover the sum of \$25,000 damages; alleging that the defendant had falsely imprisoned the plaintiff in the months of August, September and October, 1892, at the City of Bolivar, in the Republic of Venezuela, and had, during the said time, assaulted and beat the plaintiff (*Record, fol. 10*). The case was removed, on application of the defendant, into the Circuit Court of the United States for the Eastern District of New York, and thereafter the defendant filed his answer, denying the allegations of the complaint, and alleging that whatever was done or authorized by the defendant, was done or authorized by him as an official of the Venezuelan Government at that place (*Record, fol. 87*). The case thereafter came to trial before Hon. Hoyt H. Wheeler and a jury, and, after the offering of evidence and the examination of witnesses on the part of the plaintiff, the Court, at the close of plaintiff's case, directed that a verdict be entered against the plaintiff, and refused to submit the case, or any part thereof, to the jury, to all of which due exception was taken by the plaintiff (*Record, fol. 538*).

The ground of this disposition of the case was that the defendant was a person having soldiers under his command and was *de facto* in power in Bolivar at that time, and that in such cases there was no right of action anywhere, without reference to the character of the acts done or the character of his power; that is, whether he represented the legitimate Government of Venezuela or an insurrectionary government. The theory was, that the existence of the state of war, and the fact that the defendant was *de facto* in power at Bolivar, took away all right of action (*Record, fol. 534*).

Judgment in favor of the defendant was thereupon entered, assignments of error were filed by the plaintiff, and a writ of error was, thereafter

duly sued out to the Circuit Court of Appeals for the Second Circuit.

The writ of error came on to be heard before the Honorables William J. Wallace, E. Henry Lacombe and Nathaniel Shipman, constituting the Circuit Court of Appeals for the Second Circuit, and, after argument, the judgment was affirmed, his Honor, Judge Wallace, writing the opinion, which is hereto annexed, marked "Exhibit A."

III. --FACTS ESTABLISHED BY THE EVIDENCE. That the following are the facts established by the evidence at the trial:

The plaintiff, a citizen of the United States, was, with his wife, living in the City of Bolivar, Venezuela, in the year 1892. Under a contract with the government, he had constructed the water works system of that place at a cost of \$75,000 to \$100,000 (*Record, fol. 446*), and that he owned and was managing the same. In March, 1892, the Underhills had established their domicile at Trinidad, the English island, situated near the coast (*Record, fols. 269, 452*), but retained, also, their house at Bolivar. During the spring and summer of that year a very high inundation of the Orinoco River had occurred, covering Underhill's pump works so as to stop all possible operations of the water works system, until after the events which form the basis of this suit. The false imprisonment continued from August 13th to October 18th; and the fact was established that the water works could not have been started until after that time (*Record, fols. 272, 313, 358*).

During the spring and summer of that year (1892) the country was having revolutionary troubles. It appears that one Palacio had been president of Venezuela under a term expiring March 1, 1892 (*Record, fol. 337*); that the congress, whose duty it was to elect his successor, had failed to do so, and had never agreed upon a successor (*Record, fols.*

337, 373, 377, 437). The Palacio party remained in possession of the offices everywhere throughout the country (*Record, fol. 331*). Several groups of revolutionists were formed against the Palacio party, such as the Crespistas, Gordos, &c. (*Record, fols. 438, 335*). The plaintiff, Underhill, was careful to maintain a strict neutrality throughout (*Record, fols. 331 and 444 to 449*). Crespo, the leader of one of the factions, finally succeeded in capturing the capital, Caracas, on October 6, 1892 (*Record, fol. 262*). A new government, with Crespo as president, was formed, and was recognized by the United States October 23, 1892, after the happening of all the events sued upon in this action (*Record, fol. 240*).

The position of Hernandez, the defendant, in the revolution does not appear, except that he was in revolt against the constituted authorities—was an insurgent. He raised troops for revolutionary purposes (*Record, fol. 264*); but it does not appear that he had any commission from Crespo or from any other revolutionary authority, or that he was working under their direction. It does not appear that there was any general plan of operations, military or otherwise.

Early in August General Santos Carrera, a military commander for the existing government at Bolivar, went out against Hernandez. The result was the death of Carrera and the taking possession of the town of Bolivar by Hernandez (*Record, fols. 265, 386, 429, &c.*), the government officials having fled therefrom.

The soldiers led by Hernandez had no uniform, unless a white band around the hat can be called such, having different legends upon it (*Record, fol. 283*), and carried different sorts of weapons (*Record, fol. 448*).

Upon entering the town, the defendant immediately took complete control of everything (*Record, fols. 353, 356, 509*); called himself "Civil and Mili-

tary Chief" (*Record, fol. 312*); used the government's stamp on his documents (*Record, fols. 312, 351*), and appointed judges and other officials there; but his authority, though absolute in the town, did not extend beyond it (*Record, fol. 382 et seq.*). As a matter of fact, there were practically no inhabitants outside of the town for many miles (*Record, fol. 380*), most of that country being entirely uninhabited.

The defendant immediately placed a guard of soldiers around the plaintiff's house, who stopped him when he attempted to leave the house (*Record, fols. 291, 328, 455*). For two months he was imprisoned there (*Record, fol. 295*), soldiers being stationed around it night and day, front and rear (*Record, fols. 294, 458, 493*); twice the plaintiff went in person to Hernandez to demand that he be allowed to leave the place, the soldiers accompanying him there and back (*Record, fols. 299, 313, 462, &c.*). The Underhills received frequent warnings from friends not to show themselves at the doors or windows, as their lives were in danger (*Record, fols. 302, 464*). There was firing of musketry towards the house all the time (*Record, fol. 303*). They were called contemptuous names, and reviled as "Yankees" (*Record, fol. 303*). The U. S. flag was a special object of attack. Cannon were brought to the house, loaded, and left pointed towards the doors and windows of the house to threaten them (*Record, fols. 300, 320, 328, &c.*). These troubles made the plaintiff violently sick with brain fever, in danger of death (*Record, fols. 301, 467*).

For a month no reason whatever was given by Hernandez for keeping the plaintiff there; then the reason given was that he was necessary to run the water works, although it was shown that he had perfectly competent assistants who would stay, and, besides that, it was impossible to do anything with the water works then; finally, the pretended reason for detaining him was to answer to some

sort of a court for a pretended personal insult to Hernandez.

The defendant demanded from the plaintiff that he sell the water works business (*Record, fol. 317*), and told everybody that he intended to break the contract (*Record, fol. 370*). The plaintiff was finally allowed to go on October 18th.

During all this time the place was perfectly quiet and orderly. People were coming and going as they pleased through the town, and to and from the town on every vessel (*Record, fol. 422*).

The Revolutionary Party was never recognized by the United States Government or by any foreign government as having belligerent rights during the struggle. The number of soldiers in the field does not appear, nor whether there was any general organization, civil or military, with a responsible head, among the Revolutionists. The regular government, however, had full diplomatic relations with the United States, Mr. Scruggs being Minister to Venezuela at that time (*Record, fol. 399*).

Under the civil law of Venezuela the personal rights of the individual are secured, both to foreigners and natives, and an action for false imprisonment and assault and battery given (*Record, fols. 117, 119, 133, 151*). International law is a part of the municipal law of Venezuela, its constitution giving it special application to all cases of civil war (*Record, fol. 234*).

IV.—The Circuit Court of Appeals, in its decision, assumes the defendant to have been a part of the Revolutionary Party, which finally succeeded in Venezuela. The ground of the decision, after assuming this point, is that the courts of a foreign country have no jurisdiction to consider civil actions against the sovereign power of a country, or any official representing, for the time being, such sovereign power, or acting under the color of such sovereign right, and that the final success of the Revolutionary Party retroactively establishes such

party and all its officials to have been the sovereign power of the country.

Upon the other hand, your petitioner maintains the law to be, as established by numerous cases in this court and other courts, that, in cases of insurrection or revolution, the courts of a foreign country must recognize the prior state of affairs as continuing until the executive branch of the government has, by its recognition, established a different state of affairs; that, therefore, so far as the courts of this country are called upon to decide the question, they must assume all insurrectionary acts by the Revolutionists of Venezuela to have been unlawful, for the reason that the Government of the United States had never recognized such Revolutionists as having belligerent rights of any sort; that success does not act in our courts retroactively to legitimize the acts of a revolutionary party, nor give it belligerent rights, unless the executive department of our Government has so declared, and that the mere recognition of a new government is not a recognition of the rightfulness of the methods by which it arose.

Your petitioner also contends that it should have been left to the jury to decide whether the defendant was a part of a regular organized army, having the right to make war, or was a mere filibuster, acting for himself alone; and whether his acts had any military justification, or were merely capricious or malicious.

V.—Your petitioner urges the following as reasons for bringing this case within the rules of this court allowing a certiorari.

(1). It is a question involving important principles of International Law and the comity of nations. It is the policy of our system to have the Supreme Court decide all such questions. For that reason the statute directs all appeals in prize cases to be directly to the Supreme Court.

(2). The decision is in conflict with many decisions of the Supreme Court, which hold that the courts cannot look into the question as to whether a civil war exists in another country, so as to excuse the acts of insurgents, until the Executive Department has recognized in them the existence of belligerent rights. Relying upon those authorities, the *Itata Case*, 56 Fed. Rep., 504, decided by the Circuit Court of Appeals for the Ninth Circuit, has held that the status of revolutionists is to be decided by the court in the same light as they were regarded by the Executive Department of the United States at the time of the alleged offenses, irrespective of subsequent success or recognition.

Wherefore, your petitioner prays that this Honorable Court will be pleased to grant a writ of certiorari in this case to the Circuit Court of Appeals for the Second Circuit to bring up this case, and the record thereof, to this Honorable Court for such proceedings therein as to this Honorable Court may seem just.

STATE OF NEW YORK, }
Southern District of New York, } ss.:
 City and County of New York, }

GEORGE F. UNDERHILL, being duly sworn, says: That he has read the foregoing petition, and that the same is true to his own knowledge.

That deponent's knowledge is derived from the record in this case and from what has taken place in his presence and hearing upon the trial.

GEO. F. UNDERHILL.

Sworn to before me this 15th {
 day of February, 1895. }

GEO. A. BAKER,
Notary Public.
 N. Y. County.

I hereby certify that I have examined the foregoing petition, and, in my opinion, the petition is well founded, and that the case is one in which the prayer of the petitioner should be granted by this Court.

SALTER S. CLARK.

Exhibit A.

UNITED STATES CIRCUIT COURT OF
APPEALS,

SECOND CIRCUIT.

GEORGE F. UNDERHILL,

Plaintiff in Error,

vs.

JOSE MANUEL HERNANDEZ,

Defendant in Error.

WALLACE, Circuit Judge.

This is a writ of error by the plaintiff in the Court below to review a judgment for the defendant, entered upon the verdict of a jury pursuant to the direction of the Trial Judge. The suit was for false imprisonment and assault and battery of the plaintiff, committed by the defendant at the City of Bolivar, Venezuela. The acts complained of consisted in the detention of the plaintiff at his own residence in the City of Bolivar, under a guard of soldiers stationed near the house, from August 13th to October 18th, 1892, by the authority of the defendant, during which time the plaintiff was not

permitted to leave the house without an escort of soldiers, and was several times refused a passport to leave the city, for which he made application to the defendant. During this period the defendant was in command of the city as a military officer. A revolution had been organized against the government of Venezuela, and an army had been mustered against the adherents of the recent President, whose term of office had expired, and who, it was claimed by the revolutionists, no longer represented the legitimate government. The principal parties to this conflict were those who recognized Palacio as their chief and those who followed the leadership of Crespo. The defendant belonged to the revolutionary party, and commanded its forces in the vicinity of Bolivar. Early in August an engagement took place between the forces of the two parties near Bolivar; the revolutionists prevailed, and August 13th the defendant entered Bolivar at the head of his forces and assumed command of the city. From that time until the plaintiff was permitted to leave Bolivar the defendant was the civil and military chief. Early in October the revolutionary party prevailed generally, and took possession of the capital of Venezuela; and on the 26th day of October, 1892, the Crespo Government, so called, was formally recognized as the legitimate government of Venezuela by the Government of the United States, pursuant to instructions from the State Department to our minister, to recognize the new Government, provided it was "accepted by the people, in the possession of the power of the nation, and fully established."

The plaintiff was a citizen of the United States who had constructed a water works system for the City of Bolivar under a contract with the government, and was engaged in supplying the place with water. He also carried on a machinery repair business. The evidence upon the trial indicated that the purpose of the defendant in his treatment of the plaintiff was to coerce the plaintiff to operate

his water works and his repair works for the benefit of the community and the revolutionary forces; it was not sufficient to have warranted a finding by the jury that the defendant was actuated by malice or any personal or private motive. The Trial Judge ruled, at the request of the defendant, that upon these facts the plaintiff was not entitled to recover, and directed a verdict for the defendant against the exceptions of the plaintiff.

The important question presented by the assignments of error arises upon the exception to the direction of a verdict for the defendant. This ruling proceeded upon the ground that because the acts of the defendant were those of a military commander, representing a *de facto* government in the prosecution of a war, he was not civilly responsible therefor.

Consideration of comity and of the highest expediency require that the conduct of States, whether in transactions with other States or with individuals, their own citizens or foreign citizens, should not be called in question by the legal tribunals of another jurisdiction. The citizens of a State have an adequate redress for any grievances at its hands by an appeal to the courts or the other departments of their own governments. Foreign citizens can rely upon the intervention of their respective governments to redress their wrongs, even by a resort, if necessary, to the arbitrament of war. It would be not only offensive and unnecessary, but it would imperil the amicable relations between governments, and vex the peace of nations, to permit the sovereign acts or political transactions of States to be subjected to the examination of the legal tribunals of other States. Influenced by these reasons, and because the acts of the official representative of the State are those of the State itself, when exercised within the scope of their delegated powers, courts and publicists have recognized the immunity of public agents from suits brought in foreign tribunals for acts done within their own States in the

exercise of the sovereignty thereof. In *Moondalay v. Morton* (1 B. C. C., 469), the Master of the Rolls, while retaining jurisdiction of a suit which involved the private transactions of the East India Company, said: "They have rights as a sovereign power; they have also duties as individuals. If they enter into bond in India, the sums secured may be recovered here. I admit that no suit will lie in this court against a sovereign power for anything done in that capacity." In *Nabob of Arcot v. The East India Co.* (4 B. C. C., 180), the answer to a bill in equity alleged that all the transactions mentioned in the bill were of a political nature, and matters of State, and the Court dismissed the suit on that ground. In *The Duke of Brunswick v. The King of Hanover* (6 Beavan R., 1), the Master of the Rolls concluded an elaborate discussion of the liability of the defendant to a suit in chancery with the opinion that the King of Hanover, although a subject of Great Britain, was exempt from all liability to be sued in the courts of this country for any acts done by him as King of Hanover. Upon an appeal from his judgment dismissing the cause to the House of Lords (2 H. L., Cas. 1), that tribunal decided that the defendant, notwithstanding he was a British subject, and was in England exercising his rights as such when sued, could not be made to account, in the Court of Chancery, for acts of state, whether right or wrong, done by him abroad in virtue of his authority as sovereign. The decision was put, not upon the personal immunity of the sovereign from suit, but upon the principle that no court in England could sit in judgment upon the act of a sovereign effected by virtue of his sovereign authority abroad. The Lord Chancellor said that "a foreign sovereign coming into this country cannot be made responsible here for an act done in his sovereign character in his own country;" that "the courts of this country cannot sit in judgment upon the act of a sovereign effected by virtue of his sovereign authority abroad; an act not done as a British

subject, but supposed to be done in the exercise of his authority, vested in him as sovereign." * * * In *Hatch v. Baez* (7 Hun, 596), the New York Supreme Court decided that an action could not be maintained in the courts of the State against the former president of the Dominican Republic for acts done by him in his official capacity, although he had ceased to be president when the suit was brought. The Court said: "We think that by the universal comity of nations, and the established rules of international law, the courts of one country are bound to abstain from sitting in judgment on the acts of another government done within its own territory. * * * To make him amenable to a foreign jurisdiction for such acts would be a direct assault upon the sovereignty and independence of his country. * * * The fact that the defendant has ceased to be president of St. Domingo does not destroy his immunity. That springs from the capacity in which the acts were done and protects the individual who did them because they emanated from a foreign and friendly government."

The law officers of the United States have uniformly advised the executive department that individuals are not answerable in foreign tribunals for acts done in their own country in behalf of their government by virtue of their official authority.

In 1794, one Collet, lately the French Governor of Guadaloupe, was arrested in this country in an action brought against him for the seizure and condemnation of a vessel. The matter having been brought to the attention of our Government, it was referred to the Attorney-General, and he advised that the defendant, being subject to process, the Government could not then intervene, but added his opinion that if the seizure of the vessel were admitted to have been an official act done by the defendant by virtue or under color of the powers vested in him as governor, it would of itself be a sufficient answer to the plaintiff's action, and that

the defendant ought not to answer in our courts for any mere irregularity in the exercise of his powers, and that the extent of his authority could with propriety or convenience be determined only by the constituted authorities of his own nation." 1 Op. Atty.-Gen. 45-46. In 1797, in the case of *Sinclair*, the Attorney-General expressed the opinion "that a person acting under a commission from the sovereign of a foreign State is not amenable for what he does, in pursuance of his commission, to any tribunal of the United States." 1 Op. Atty.-Gen., 81. In 1871 the Attorney-General advised the Secretary of State as follows: "It has often been laid down that before a citizen of one country is entitled to the aid of his government, in obtaining redress for wrongs done him by another government, he must have sought redress in vain from the tribunals of the offending power. The object of this rule plainly is to give the offending government an opportunity of doing justice to the injured party in its own regular way, and thus avoid all occasion for international discussion." In 1872, in the case of the steamer *Tipitapa*, the Attorney-General advised the Secretary of State in a case where an officer of a party of armed men, acting under an order of the judicial officer of the port of Granada, had seized an American vessel at that port, the seizure having been made for the purpose of enforcing a supposed legal right, "that the government ought not to make reclamation in behalf of the owner, as it is presumable that if the proceedings were illegal the judicial tribunals of Nicaragua would afford redress."

Conspicuous amongst the acts which are sheltered by this principle of international law are those of military officers in command of the armed forces of the State. According to one of the most recent commentators upon international law (Hall, Section 102), officers in command of armed forces of the State, and their subordinates and soldiers, are not in any case amenable to the civil or criminal

laws of a foreign State, in respect to acts done in their capacity as agents, for which they would be punishable or civilly responsible if done in their private capacity. This doctrine was sanctioned by our own Government in 1841, in the case of McLeod, who was under indictment for murder in a State Court of New York. He had been engaged as a member of the colonial forces in repelling an attack made upon Canada by an armed force from the United States, and had assisted in the destruction of a vessel moored on the American shore of the Niagara River, during which an American citizen was killed. The British Government, through its minister at Washington, demanded his release upon the ground that the destruction of the vessel was a public act, of persons in her Majesty's service, obeying order of the superior authorities, and, therefore, according to the usages of nations, could only be the subject of discussion between the two Governments. Mr. Webster, then Secretary of State, acceded to this view, stating that, "the Government of the United States entertains no doubt that, after the avowal of the transaction as a public transaction, authorized by the British authorities, the individuals concerned in it ought not, by the principles of public law and the general usage of civilized States, to be holden personally responsible in the ordinary tribunals of law for their participation in it." The Courts of New York refused to release McLeod at the intervention of the general Government, and he was tried, but acquitted on proof of an alibi. The episode led to the enactment, by Congress in 1842, of the provision, now Section 753, United States Revised Statutes, by which the courts of the United States are authorized to issue a writ of *habeas corpus*, "where a person, being a subject or citizen of a foreign State, and domiciled therein, is in custody for an act done or omitted, under any alleged right, title, authority, privilege, protection or exemption claimed under the commission, or order, or sanction of any

foreign State, or under color thereof, the validity and effect whereof depend upon the law of nations."

Upon principle it cannot be important whether the acts of military authorities, when called in question, are done by the authority of a *de jure* or *titular*, or of a *de facto* Government. In either case, if they are done in the legitimate exercise of belligerent powers, they are not ordinarily attended with civil responsibility. This principle has been recognized by the Supreme Court of the United States in cases in which the civil liability of Confederate soldiers, for acts done as members of the insurgent forces, during the rebellion, was under consideration. *Ford v. Surget* (97 U. S., 594); *Freeland v. Williams* (131 U. S., 405).

As was decided in *Williams v. Bruffy* (96 U. S., 176), the Government of the Confederate States was a *de facto* government of an inferior class. "It never represented a nation; it never expelled the public authorities from the country; it never entered into any treaties, nor was it ever recognized as a government by an independent power."

Ford v. Surget was an action brought by the plaintiff to recover the value of certain cotton destroyed during the war of the rebellion in the State of Mississippi; and the Court held that the defense that it was destroyed by the defendant, acting under the orders of the military authorities of the Confederate States, was a good justification. *Freeland v. Williams* was a bill in equity to invalidate a judgment of the court of the State of West Virginia obtained against the defendant for a *tort* committed by him as a soldier of the Confederate army. One of the questions discussed was whether the judgment was void, inasmuch as it proceeded upon the grounds that the defendant was civilly responsible as a trespasser for an act done by him as a Confederate soldier in accordance with the usages of civilized war. In the prevailing opinion the Court said: "The case as presented to us shows

that the trespass for which the original judgment was rendered was of that character, and it is argued with much force that the court which rendered that judgment had no jurisdiction in the case, or, at all events, had no jurisdiction to render such a judgment, and that it is therefore void. It follows, from this view of the subject, that the court in which it was originally rendered had jurisdiction to set aside or annul it without the aid of the constitutional provision of the State of Virginia, and that on that ground alone the decree we are called upon to review must be affirmed. In this view of the subject some of the judges of this court concur." Again the Court say: "If it be true that, when the original action was presented to the Circuit Court of Preston County, the thing complained of was found to be an act in accordance with the usages of civilized war, during the existence of a war flagrant in that part of the country, that court should have proceeded no further, and its subsequent proceedings may be held to have been without authority of law. While it is not necessary to hold that the judgment, as presented by the record, is absolutely void, it may be conceded that a court of equity, in a proper case, can prevent the enforcement of it." In a dissenting opinion Mr. Justice Harlan insisted that the judgment was not void, but conceded that the complainant was not civilly responsible if his act was one of legitimate warfare as a soldier in the Confederate army.

The acts of the defendant as a military commander of the revolutionary forces in the civil war in Venezuela, although performed before the revolution became successful, are sheltered by the same immunities that would surround them if they had been performed subsequently. The organization of which he was a part, represented that kind of a *de facto* government which is described in *Williams v. Bruffy*,

"such as exists where a portion of the inhabitants of a country have separated themselves from the parent state and established an independent government. The validity of its acts, both against the parent state and its citizen or subjects, depends entirely upon its ultimate success. If it fail to establish itself permanently, all such acts perish with it. If it succeed, and become recognized, its acts from the commencement of its existence are upheld as those of an independent nation." By its success the revolutionary party vindicated its claim to recognition as the legitimate government of Venezuela, and achieved a justification in the estimation of foreign governments and their legal tribunals for the acts of its military forces as complete and ample as though those forces had been employed by any sovereign power. After the recognition of the new government by the United States, the courts of this country must accord to those who, throughout the progress of the civil war, acted as the agents of the people of Venezuela, the position of official representatives of the state. The act of recognition by our Government neither added to, nor detracted from, the responsibility of the people of Venezuela for any prior injuries which citizens of the United States may have suffered on her soil from the hands of her *de facto* authorities; but these responsibilities, in our judgment, are to be adjudicated by the two governments by international action, according to the principles of international law applicable to such cases.

For these reasons we conclude that the acts of the defendant were the acts of the Government of Venezuela, and as such are not properly the subject of adjudication in the courts of another government.

The various requests made to the court on behalf of the plaintiff for instructions to the jury, either

involve propositions of law, which, according to the views we have expressed, were properly refused, or propositions for the submission of questions of fact, as to which there was no conflict of evidence, and which, therefore, the Trial Judge was not required to submit to the jury. If the Trial Judge, in directing a verdict for the defendant, enunciated a rule which, to its full extent, may not obtain, because it implies that the defendant would not be civilly responsible, even in a court of Venezuela, for any act done by him as a military commander, his disposition of the case was nevertheless proper, and the result is not affected by his expression of an erroneous opinion.

The judgment is affirmed.